

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4517 of 1990
with
SPECIAL CIVIL APPLICATION NO.4518 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

B T SOLANKI

Versus

DY SECRETARY

Appearance:

MR SV PARMAR for MS PREETI S PARMAR for Petitioner
MS KATHA GAJJAR LD. AGP for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 10/05/2000

ORAL JUDGEMENT

These two writ petitions involve same question of facts and law, and therefore, I dispose of both the petitions by this common order.

In Special Civil Application NO. 4517 of 90 petitioner is Babubhai Trikambhai Solanki and in Special Civil Application No. 4518/90 Navinchandra Aljibhai Solanki is the petitioner.

Both the petitioners are the government employees and the government passed resolution for allotment of land to the Government employees, who bonafide requires the land for construction of their houses. In Government resolution, there was certain condition namely the requirement by the government servant shall be bonafide and there is also income bar for allotment of land in respect of certain Government employees. Both the petitioners applied to the Collector of Mehsana district for allotment of land for construction of their houses as they were in bonafide requirements of such lands. Both the petitioners belong to backward community of the State. As both the petitioners satisfied the conditions according to the Government resolution, the Collector, Mehsana referred the case of the petitioners to the Government and the Government after making a due inquiry through an Officer recommended allotment of land to the petitioners and, accordingly, the Collector, Mehsana allotted two plots of land to both the petitioners for constructing their houses. After getting the allotment order, the petitioners executed documents which were also signed by the competent authority of the Government. The possession of the land was handedover to both the petitioners in respect of their allotted lands. Thereafter, both the petitioners applied to the Patan Municipality for grant of permission of the building that is to be constructed on that allotted land. The Patan Municipality after making due inquiry approved and sanctioned the plans of the building to be constructed by the petitioner in their allotted land. Accordingly, both the petitioners started construction of their building. It is also stated by the petitioners that both the petitioners applied to the Government for house building advance and the Government sanctioned the house building advance to both the petitioners and with the house building advance money both the petitioners started construction of building on the allotted land. While the construction was in progress, the respondent no. 3-Solanki Sevantilal Kalabhai filed an application to the Government for cancelling the allotment of land to the petitioners. The case has been registered as Revision Application No. SRD/JMN-MSN-10-89. The aforesaid revision application was heard by the Deputy Secretary (Appeals). It is alleged in the petitions that copies of the revision application filed by the respondent no. 3

has not been supplied to the petitioners and they were not properly heard by the Deputy Secretary (Appeals), however, the Deputy Secretary (Appeals) by his order dated 23.4.90 allowed the revision application and cancelled the allotment of the land made in favour of both the petitioners by a common order.

Having felt aggrieved by the order passed by the Deputy Secretary (Appeals) in the aforesaid revision application, the petitioners filed these two petitions challenging the legality of the order passed by the Deputy Secretary (Appeals).

I have heard Mr. SV Parmar FOR Miss. Prity S. Parmar on behalf of both the petitioners and Ms. Kathaben Gajjar learned AGP for the State-respondents.

The order of the Deputy Secretary (Appeals) has been challenged on the grounds that; (a) papers were not made available to the petitioners before hearing the revision application; (b) that the Deputy Secretary (Appeals) had no authority under sec. 211 of the Bombay Land Revenue Code to revise or cancel the allotment order passed by the Collector, and (c) the question of title to the land in favour of the petitioners cannot be affected by a mere order of cancellation of allotment.

Mr. Parmar, learned counsel appearing on behalf of the petitioners, submitted that the respondent no.3 filed an application before the revisional authority. That the copy of the revision has not been supplied to them and, therefore, it is difficult to represent their case before the revisional authority. Learned counsel for the petitioners submitted that this aspect was not considered by the Deputy Secretary (Appeals) and without supplying any copy of the revision application, the matter was heard. The learned counsel for the petitioners consequently submitted that the order has been passed by the Deputy Secretary (Appeals) without affording reasonable opportunity to the petitioners, and, therefore, the order of the Deputy Secretary (Appeals) passed in the aforesaid revision application on 23.4.90 should be quashed. It is also submitted by the learned counsel for the petitioners that the Deputy Secretary (Appeals) has cancelled the allotment on the ground that the petitioners are having their residential houses and, therefore, they are not entitled to get the allotment of land as per the Government Resolution dated 18.1.1980. Learned counsel for the petitioners submitted that no papers were produced before the Deputy Secretary (Appeals) to show that any of the petitioners are having

independent residential accommodation in their name. It is submitted by the learned counsel for the petitioners that the respondent no. 3- Solanki Sevantilal Kalabhai produced some papers before the Deputy Secretary (Appeals) showing that a small portion of land admeasuring 40sq.ft. stand in the name of petitioner of Special Civil Application No. 4517/90. It is contended by the learned counsel for the petitioners that the papers submitted by the respondent no. 3 is not based on any authentic documents maintained by the Government. It is submitted that the petitioners have produced the records of the land which is not in the name of the petitioner and from the aforesaid record, it would be evident that the petitioner is not the owner of the aforesaid plot and the said plot of land stands in the name of his sister-in-law- Ratanben Muljibhai Solanki. I have gone through the order passed by the Deputy Secretary (Appeals) in the revision case. From the order, it appears that the Deputy Secretary (Appeals) relied on the documents produced by the respondent no. 3-Solanki Sevantilal Kalabhai. No revenue records or certified copy from the City Survey Office or from the Municipality has been produced to show that the land belongs to the petitioner. Learned counsel for the petitioners further submitted that even if it is assumed that the petitioner is co-owner in respect of 40 sq.ft. of land with his sister-in-law, than also, that will not deprive the petitioner from getting the allotment of land as per Government resolution, as the resolution contemplates that the requirement of the land should be bonafide on the part of the Government employees. The learned counsel for the petitioners submitted that 40 sq. ft. area of land is not even sufficient for single family and in this small plot of land by even stretch of imagination one cannot expect to live two families. Learned counsel for the petitioners consequently submitted that no papers have been submitted either by the respondent no. 3-Solanki Sevantilal Kalabhai or by any Government or Local Authority to show that the said disputed 40 sq. ft. plot really belongs to the petitioner. As regards other allegations made in the order of the Deputy Secretary (Appeals) that some other lands also stands in the name of the petitioner, the learned counsel for the petitioners submitted that the petitioners have produced all the relevant documents and those documents clearly shows that the father of the petitioner was owner of certain lands and the brothers of the petitioner have purchased it from their father and after purchase, the brothers of the petitioner are in possession of their purchased land. Consequently, learned counsel for the petitioners submitted that since

the petitioner is not having any residential plot or building, it was his bonafide requirement to get allotment of land for construction of his residential house.

The allegation on which the allotment of land to petitioner of Special civil Application No. 4518/90 was cancelled is that he is having land in his own name and, therefore, he is not entitled to get allotment as per the Government resolution. While cancelling the allotment of the petitioner of SCA No. 4518/90, the same 40 sq.ft land was shown to be owned by the petitioner. In that case also, the respondent no. 3 or the Government authority has failed to produce any Government papers or papers from local authority to show that the petitioner is really the owner of the aforesaid plot of land. After going through the order passed by the Deputy Secretary (Appeals) it does not appear that he weighed his finding on the basis of any oral or documentary evidence. According to the Government circular, a Government employees is entitled to get the allotment of land if he is in bonafide requirement of such land. In the instant case, it appears that none of the petitioners were having any land in their name and both the petitioners belonged to the Harijan community. It further appears that initially when the petitioners applied for allotment of land, the same was cancelled by the Collector, but on an appeal to the Government, the appeal was allowed and the Collector was directed to take a fresh decision on the prayer of the petitioners in accordance with law. When the matter was sent back to the Collector, the same was considered by the Collector and before making any order of allotment, a local inquiry has been conducted and in the local inquiry report, it has been said that the land do not fall even in public road and, therefore, the same can be allotted to the petitioners. Accordingly, the land was allotted to the petitioners. Now, a question has been raised whether after allotment of the land, the Collector or any other authority have any power to interfere with the order of allotment where the Sanad has been issued to the allottee. It is not in dispute that Sanad has been granted to the petitioners in accordance with the provisions of Bombay Land Revenue Code and the Rules framed thereunder. The petitioners have paid revenue to the Government as per the assessment made by the authority. When the transaction is completed, whether at this stage, the Deputy Secretary (Appeals) have any powers to cancel the allotment.

that since the allotment has been made under the provisions of Bombay Land Revenue Code, the revenue authority has powers to alter, modify and/or to even cancel the allotment order by invoking the provisions of sec. 211 of the Bombay Land Revenue Code. It is submitted by the learned AGP that the allotted land is a part of the public road and, therefore, the allotment made in favour of petitioners have been cancelled. I cannot accept the submission of learned AGP in view of the fact that the matter has already been enquired by Officer of the Government, who has submitted a clear report that the land allotted to the petitioners do not fall in public road. Learned AGP also submitted that while allotting the land to the petitioners, the Collector has not followed the procedure as prescribed by Act and the Rules made thereunder and, therefore, the Government considered it necessary to cancel the allotment. Since the petitioners do not fulfill the conditions of the Government resolution, there is no error or illegality on the part of the Deputy Secretary (Appeals) in cancelling the allotment order. It is submitted that since the Collector do not follow the procedure while allotting the land to the petitioners, the Deputy Secretary (Appeals) was right in cancelling the allotment order.

The question whether after granting Sanad to an allottee, the allotment can be cancelled under sec. 211 of the Bombay Land Revenue Code has been discussed and decided by this Court in the case of Patel Raghav Natha vs. G.F. Mankodi, Commissioner, Rajkot Division & Ors., reported in 1965, G.L.R. Vol. VI, Page 34. In that case also, certain lands were allotted to some persons and Sanad was granted. It has been held by this Court in the aforesaid case that when the Sanad has been granted than the proper remedy for the Government is to move the Civil Court for getting any relief against the allottee. It has also been held that after the Sanad is granted to an allottee, the conditions between the parties will be regulated as per the terms of the Sanad and not by resorting to the provisions of sec. 211 of the Bombay Land Revenue Code. In the instant case also, after allotment of the land, the plans have been granted to the petitioners and they had paid revenue to the Government as per the assessment made by the competent authority. In view of the aforesaid decision, it is evident that even if the Deputy Secretary (Appeals) have cancelled the order of allotment, such cancellation cannot have any effect on the title of the petitioners on their allotted lands. As per the terms of the Sanad, the petitioners are to hold the land in perpetuity. In case of contravention of any of the conditions of Sanad or

agreement, the Collector may take steps against the petitioners by imposing the penalty or other measures but the allottee are to be continued in possession of their allotted lands. After going through the Sanad or Agreement, it is evident that it is not the intention of the Government to evict the allottee from their allotted land. In the present case, after allotment, the petitioners applied for sanctioning the plans for construction of their houses to the municipal authority and the municipal authority after due inquiry, approved the plans and design of the petitioners regarding construction of their residential houses. It further appears that the petitioners applied for house building advance to the Government and the Government after making due inquiry sanctioned house building advance to both the petitioners and with loan money, they have constructed their residential house in allotted land. Having regard to the subsequent event that has taken place, I am of the view that any adverse order to the petitioners will be undoing and unsettling the settled position which they are enjoying for quite long time. Having regard to the facts and circumstances stated above and after considering the submissions of learned counsel for the both the parties, I am of the view that the Deputy Secretary (Appeals) has committed an error in cancelling the allotment in favour of the petitioners. I am, therefore of the view that the order of the Deputy Secretary (Appeals) passed in Revision Case No. SRD/JMN-MSN-10-89 on 23.4.1990 is required to be quashed and, accordingly, the said order of the Deputy Secretary (Appeals) is quashed. Both the petitions are allowed. Rule is made absolute to the extent granted above in both the petitions, however, I make no order as to costs.

(P.K. SARKAR, J.)

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